

MINUTES
ELKHART COUNTY PLAN COMMISSION MEETING
HELD ON THE 12TH DAY OF JUNE 2008 AT 9:00 A.M.
MEETING ROOM – DEPARTMENT OF PUBLIC SERVICES BUILDING
4230 ELKHART ROAD, GOSHEN, INDIANA

1. The regular meeting of the Elkhart County Plan Commission was called to order by the Chairperson, Jeff Burbrink, with the following members present: Meg Wolgamood, Roger Miller, Tom Holt, Dennis Sharkey, and Mike Yoder. Staff members present were: Robert Watkins, Plan Director; Mark Kanney, Planning Manager; Duane Burrow, Senior Planner; Robert Nemeth, Planner; Dan Piehl, Planner; and James W. Kolbus, Attorney for the Board.

2. A motion was made and seconded (*Miller/Holt*) that the minutes of the regular meeting of the Elkhart County Plan Commission held on the 8th day of May 2008 be approved as submitted and the motion was carried unanimously.

3. A motion was made and seconded (*Sharkey/Holt*) that the legal advertisements, having been published on the 31st day of May 2008 in the Goshen News and on the 2nd day of June 2008 in The Elkhart Truth, be approved as read. The motion was carried with a unanimous vote.

4. A motion was made and seconded (*Miller/Holt*) that the Elkhart County Zoning Ordinance and Elkhart County Subdivision Control Ordinance be accepted as evidence for today's hearings. With a unanimous vote, the motion was carried.

5. The application for a vacation of a southeast/northwest alley right-of-way, for **Mark & Jane Beard** represented by B. Doriot & Associates, Inc., on property located 135 ft. East of Wabash Avenue between High Street and School Road in Olive Township, zoned R-1, was presented at this time.

Mr. Nemeth presented the Staff Report/Staff Analysis, which is attached for review as *Case #20081665*. He clarified that this 16-foot alley has never been paved and it currently has landscaping on it. He also reported that the survey states there are no utilities within the alley. According to Mr. Nemeth, there were no negative comments from the Technical Advisory Committee.

Blake Doriot of B. Doriot & Associates, P.O. Box 465, New Paris, was presenting representing Mr. & Mrs. Beard on behalf of this request. He also noted that David Zimmerman is present, who owns Lots 14 & 15 that will abut this vacation.

Mr. Doriot explained that this is an alley the Beards have maintained since they purchased the property, and the prior owners had maintained the alley for a long period of time. He further explained that the home and garage on Lots 15 & 14 have been raised and Mr. Zimmerman is going to place a new home on that lot. He said the Beards would like to have no right-of-way between themselves and the property they own across the alley.

Mr. Sharkey questioned the total number of owners. After Mr. Doriot pointed out the property owned by the Beards and Mr. Zimmerman on the aerial map, he said half of the alley will go to Mr. Zimmerman and the Beards will receive the balance.

There were no remonstrators present.

A motion was made and seconded (*Holt/Sharkey*) that the public hearing be closed and the motion was carried with a unanimous vote.

The Board examined said request and after due consideration and deliberation, a motion was made and seconded (*Yoder/Holt*) that the Advisory Plan Commission recommend to the Wakarusa Town Board that this request to vacate a southeast/northwest alley right-of-way be approved in accordance with the Staff Analysis. The motion was carried with a unanimous roll call vote.

6. The application for a zone map change from R-2 and B-3 to a Detailed Planned Unit Development-B-3 to be known as **MARTIN'S – ELKHART SITE - DPUD**, for Martin's Super Market represented by Wightman Petrie, Inc., on property located on the North side of CR 4, 400 ft. West of SR 19 and West side of SR 19, 450 ft. North of CR 4 in Osolo Township, was presented at this time.

Mr. Burbrink explained that he understands there is an issue with regards to the actual ownership of the property and there will be a recommendation to table the request. By a show of hands, it was then noted that the majority of those in the audience were present for this request.

Mr. Burbrink said the audience did have the option of presenting their comments to the Board, but it would be based on what they saw in the file and there may be other things that come up in the public hearing that would be different than what they have seen.

Attorney Richard Paulen, 121 W. Franklin St., Elkhart, was present representing Martins Supermarket on behalf of this request. When the application was filed, he said they thought they had options on all of the property, but they have now been advised that they may not. At the end of last week, he said they became aware of an issue that related to a family member of one of the people who signed an option. That person did not own the property; someone else did who didn't like the terms of conditions of the option. They have an approximately 20-year old Quit Claim Deed that has apparently never been recorded, but he said they have not seen the original deed.

Mr. Paulen said the title company is not prepared to insure the present owner at the present time so they are trying to clear that up. As a result of that, he said they are asking to table the request today and he believes they will be ready to proceed in July. He explained that they have missed the deadline for filing any changes to the plan, but the presentation they will make will be based on the submissions for this meeting. He then clarified that this is the land issue, not the design issue.

Mrs. Wolgamood pointed out that it was really too late to notify the neighboring property owners when this came to light and Mr. Paulen apologized for any inconvenience this has caused.

Mr. Yoder wondered if there was any value in hearing the presentation and recording the public comments on that presentation so the people who are here today do not have to make a second trip. However, Mrs. Wolgamood asked if they can hear it legally if a landowner is not on the petition.

Mr. Kolbus said he does not believe they have a legal application, which Mr. Paulen understands. He said that can be corrected by getting that signature on the petition and in the file prior to the next meeting, but he feels the Board should not hear either side because it is not a proper application by their own rules and ordinance.

In further discussion, Mr. Paulen said it is one of the tracts which is integral to the development and he doesn't have a development right now.

Mr. Sharkey asked if everyone will be notified again and Mr. Burrow said they are asking for a specific date for the hearing so normally they do not re-notify. However, he said they would re-notify everyone at the request of the Plan Commission and the consensus of the Board was to re-notify the neighboring property owners. Mr. Paulen then offered to pay the expense for re-notification and Mr. Burrow said that would be at the discretion of the Plan Commission.

An audience member asked to address the Board with a question, but the Board indicated they may or may not be able to answer it at this time.

Mr. Dolph owns property on CR 4 by 7-11 and he asked if the parcel in question is to the west, but the Board indicated they could not answer that question at this time. Mr. Burbrink said they could only talk about the time and date of the next hearing.

Mr. Dolph then asked if this meeting is about a zoning request for the entire plot and Mr. Kolbus replied yes. He clarified that all owners have to be signed on to the application, which they do not have at this time.

A motion was then made and seconded (*Holt/Wolgamood*) that the Advisory Plan Commission table this request until the July 10, 2008, Plan Commission meeting with neighboring property owners to be re-notified at the cost of the petitioner. With a unanimous roll call vote, the motion was carried.

7. In an audience item, Phil Replogle said he lives just west of what he thinks is the proposed area for the Martins Supermarket on CR 4 and he was not notified of this meeting. When asked if his property is within 300 ft. of the subject property, he said it is close. Mr. Replogle was advised to see the staff as they could look at the file to determine if he is on the mailing list.

When he commented that he is wondering about entranceways and the easement for the school, Mr. Replogle was also advised to talk with the petitioner's representative because the Board cannot address those questions at this time.

8. In presenting the staff item for *Manor Estates DPUD*, Mr. Burrow submitted a letter from Susan Sheets, co-principal of the Michiana Christian Montessori School, Inc., with an aerial photo attached [attached to file as Staff Exhibit #1]. This property is located on the Southeast corner of CR 106 and CR 13 in Osolo Township.

The letter indicates that it is their intention to combine Lot One and Lot Two into one site, and that the school does not intend to sell any of its existing property. In addition, they are requesting several changes to their site plan and are asking that the Board consider this a minor change.

Mr. Burrow explained that the staff issued a building permit for the storage building (shown on the corner of the parcel by the walking/running track) due to timing issues associated with the Montessori school. The staff made a determination that this was a minor change as they had obtained all of the volunteers to be ready to do the work on this site. When issuing the permit, he said the staff indicated they would send the Montessori school a certified letter advising them that they were to do no further changes of land use on this site until they amend their Site Plan/Support Drawing.

According to Mr. Burrow, the walking track and soccer field were not part of the original plan, and the only detail they had was for the school building and parking lot. Subsequently, he said some of the staff members have taken it upon themselves to install certain improvements. This seems to be an ongoing problem and he said the staff doesn't know who is in charge and who to

talk to. Mr. Burrow then indicated that the planning staff will send them another letter reiterating that they are not to be making any changes on this property until they bring in another site plan for approval by the Plan Commission.

When Mr. Doriot asked if there have been any complaints from the neighbors, Mr. Burrow said they had some concerns when this originally went in.

Mr. Kolbus asked what action is required today and Mr. Burrow said he is basically withdrawing this from the Board's consideration and this is more for informational purposes. Mr. Kolbus asked if they want a confirmation from the Plan Commission for this one item and Mr. Burrow replied yes.

Mr. Yoder moved to consider this request a minor change to the site plan with notification to be sent (to the Board of Directors) regarding future changes to the site. Mrs. Wolgamood asked if this meets all setbacks and Mr. Burrow said yes. She then seconded the motion, which carried with a unanimous vote.

9. Mr. Kanney reported that the issue with *Hidden Meadow Section Three* has been resolved so there is no need for discussion.

10. Mr. Watkins distributed copies of a public comment to the Board from Chuck Bower of Dunlap with regards to the *Subdivision Control Ordinance*. He then reminded the Board that there are three public meetings and a "by invitation" meeting scheduled for discussion of the ordinance. A news release was also published last Friday and he indicated it would be sent out again this Friday to make sure there is adequate coverage. In addition, he sent the ordinance electronically to the Builders Association and the engineering firms.

Also distributed to the Board were the spring 2008 Planning Commissioner Journals.

11. The meeting was adjourned at 9:22 a.m.

Respectfully submitted.

Kathleen L. Wilson, Recording Secretary

Jeff Burbrink, Chairman